

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ALASKA

In re:

ROBERT CHARLES FREESE and LISA
JOY ZANETTI,

Debtors.

Case No. A09-00549-DMD
Chapter 7

Filed On
2/19/10

MEMORANDUM ON SALE

The debtors were members of Pioneer Peak Brewing, LLC, an Alaska limited liability company. They owned 59.28% of the outstanding interests when they sought chapter 7 bankruptcy relief. Kenneth Battley has moved for a sale of the Pioneer Peak liquor license for \$200,000 free and clear of liens and encumbrances. Battley bases his motion on a case that arose in similar circumstances, *In re Senner*.¹ *Senner* was a Judge Herb Ross case. The IRS, a creditor, and John Emmi, a prospective purchaser of the liquor license, object to the sale.

The circumstances in the *Senner* case were very different from the situation here. In *Senner*, the debtors owned 100% of the stock of a Corporation, Harry's Bar and Grill, Inc. There were fewer holds against the license from unpaid creditors. Only about \$135,000 in creditors had holds on the license.² All of them consented to a \$200,000 sale and were apparently paid in full. Here the IRS is owed over \$474,000 in liens against the license and it does not consent to the sale. Other creditors holding substantial claims have

¹Case No. A07-00549-HAR.

²Report of Sale of Liquor License, Docket No. 48, Case No. A07-00549-HAR.

not released their holds.³ Thus there is no equity available for transfer to the estate to pay all administrative costs. Additionally, there was no Mr. Emmi in the *Senner* case. Harry's Bar and Grill had not made a prior sale of the liquor license.

Senner does not stand for the sweeping relief sought by the trustee in this case. The liquor license is not property of this bankruptcy estate. This court has no power to order a sale free and clear of non-debtor property, under these circumstances. Nor does it have the power to force hold creditors to accept a pro-rata share of the proceeds. The result would be the same even if Freese and Zanetti held 100% of the Pioneer Peak interests. The trustee's motion must be denied.

DATED: February 18, 2010.

BY THE COURT

/s/ Donald MacDonald IV
DONALD MacDONALD IV
United States Bankruptcy Judge

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02/19/10

³The trustee acknowledges over \$631,000 in holds against the license.